IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 16TH MARCH 2007 / 25TH PHALGUNA 1928

OP.No. 8185 of 2001(Y)

PETITIONER:

K.K. MOHANAN, SALES TAX PRACTITIONER,
B C I TOWERS, M.C. ROAD, PERUMBAVOOR.

BY ADV. SRI.C.K.THANU PILLAI
SRI.T.K.SAHIJ RAJ

RESPONDENTS:
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1. ADDL. SALES TAX OFFICER I, SALES TAX OFFICE, SECOND CIRCLE, MATTANCHERY ON DEPUTATION TO THE SALES TAX OFFICE, FIRST CIRCLE, PERUMBAVOOR.

2. THE SALES TAX OFFICER, SALES TAX OFFICE, FIRST CIRCLE, PERUMBAVOOR.

3. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM 1

BY GOVERNMENT PLEADER SRI. C.K. GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/03/2007, ALONG WITH OP NO. 36117 OF 2001 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

(O.P. NO. 8185 OF 2001)

ORDER ON CMP 56131/01, CMP 13274/01, CMP 19678/01, I.A.15042/03 & 12443/03 IN CMP 56131/01, ALL IN OP NO. 8185 OF 2001

DISMISSED

16.3.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF ORDER NO. C5-3554/88/R.DIS. DATED 6.5.1988 OF THE DEPUTY COMMISSIONER, ERNAKULAM.

EXT.P2 TRUE COPY OF PHOTO ATTESTED BY THE TALUK PANCHAYAT OFFICER, KUNNATHUNAD

EXT.P3 TRUE COPY OF LETTER DATED 7.8.1997 BY THE PETITIONER TO SRI. P.T. ALIAS

EXT.P4 TRUE COPY OF FIRST INFORMATION REPORT NO. 389/97 DATED 30.7.1997 OF THE SUB INSPECTOR OF POLICE, PERUMBAVOOR.

EXT.P5 TRUE COPY OF ORDER IN CRL.M.P.NO. 1569 OF 1997 DATED 8.8.1997 OF THE HONOURABLE SESSIONS JUDGE, ERNAKULAM.

EXT.P6 TRUE COPY OF NOTICE NO. 23131485/23136485/96-97 DATED 29.1.2001 OF THE FIRST RESPONDENT.

EXT.P7 TRUE COPY OF NOTICE NO. 23136485/96-97/CST DATED 29.1.2001 OF THE FIRST RESPONDENT.

EXT.P8 TRUE COPY OF LETTER NO. 23131485/96-97/6485 DATED 27.2.2001 OF THE FIRST RESPONDENT.

EXT.P9 TRUE COPY OF STATEMENT OF KUMARI CHANDRIKA BEFORE SUB INSPECTOR OF POLICE, PERUMBAVOOR.

EXT.P10 TRUE COPY OF STATEMENT OF SRI.C.R. VASU BEFORE THE SUB INSPECTOR OF POLICE, PERUMBAVOOR.

EXT.P11 TRUE COPY OF REPLY DATED 9.3.2001 FILED BEFORE THE FIRST RESPONDENT.

EXT.P12 TRUE COPY OF POSTAL ACKNWLEDGEMENT DUE DATED 13.3..2001 PERUMBAVOOR POST OFFICE.

EXT.P13 TRUE COPY OF ORDER NO. 23131485/96-97 AND DEMAND NOTICES DATED 9.3.2001 OF THE FIRST RESPONDENT.

EXT.P14 TRUE COPY OF ORDER NO. 23136485/96-97 (CST) AND DEMAND NOTICE DATED 9.3.2001 OF THE FIRST RESPONDENT.

EXT.P15 TRUE COPY OF ENVELOPE IN WHICH THE PETITIONER RECEIVED COPY OF ORDER.

RESPONDENTS' EXHIBITS: NIL.

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P. NO. 8185 & 36117 OF 2001

Dated this the 16th day of March, 2007

JUDGMENT

Petitioners are challenging recovery proceedings for recovery of arrears of sales tax issued under Section 19(c) of the KGST Act. According to the petitioners, registered dealer was one P.T. Aliyas from Perumbavoor. However, on complaint filed by the said P.T. Aliyas, police conducted enquiry and it was revealed that petitioners have carried on business along with others and the said Aliyas was a scape-goat. This Court has accepted this position in two judgments in O.P.No.12219 of 2001 and 14344 of 1997. Even though there was specific direction in the second above referred judgment dated 28.10.2004, directing the Magistrate to dispose of the criminal complaint, in which petitioners are accused within six months from the date of judgment, petitioners and others who are parties to the judgment do not appear to have produced copy of judgment to get the criminal case disposed of in time. It is to be noted that none of the petitioners was interested for early disposal of criminal case, because

no one has complained against non-implementation of the judgment as no contempt case was filed in this Court. Therefore the whole effort of the petitioners is to dodge recovery and I do not think this court should permit it more so in view of the findings against petitioners. Therefore I do not find anything wrong with the recovery proceedings as petitioners were found to have carried on business in police investigation. If the petitioners have any grievance it is open to them to file statutory appeals against protective assessments.

O.Ps. are accordingly dismissed.

(C.N.RAMACHANDRAN NAIR)
Judge